



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,089	07/30/2003	Paige Fortner	FORP121050	2026
26389 7590 05/27/2009 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER				
HALE, GLORIA M				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
05/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/631,089

Applicant(s)

FORTNER, PAIGE

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Sneider (US 4674510) in view of Abercrombie (US5716255), Kepes et al (US 5858014) and Gerry et al (US 4654254).

Sneider discloses a garment pad kit with a garment pad 10,12(c4, L25-34) that is three dimensionally dome shaped (as seen in figure 3 of Sneider) and an adhesive 18 to couple the outer adhering surface to the garment. The dome shaped body includes a concave inner surface (not numbered) and a convex outer adhering surface at 14 that is directed away from the skin of the user. The adhesive of Sneider is applied to the outer layer thereon and is not a double sided bonding fabric tape that includes relief cuts, apertures and relief gaps therein. Abercrombie discloses the use of adhering breast pad devices onto a wearer using a double sided tape in order to secure one side to one surface and the other side to another surface. Kepes et al discloses a base tape layer 24 with an adhesive layer 25 thereon that forms a tape itself and that includes notches, slits, relief cuts, apertures 42,74 as seen in figures 4 and 11 and in col. 3, line 31 and col. 4, lines 10-26 in order to curve the material about the wearer breast curves. Gerry et al discloses known fabric tape that conforms better to use with other fabrics

and a wearer's skin(See Gerry Abstract). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment pad of Sneider with the teachings of Kepes et al, Gerry et al and Abercrombie to substitute the adhesive strips means 18 of Sneider with a double sided tape of Abercrombie to better secure the pad to the garment, to include relief cut, slits, apertures and gaps therein so that the tape is conformable to the curve of the pad/breast and to use a fabric tape as well known and seen in Gerry et al so that the tape better conforms to the pad material and garment material. Figure 7 of Kepes et al discloses a tape component that is arcuate in shape in a planar configuration and without relief cuts, gaps or apertures. The bonding fabric is the double sided tape of Abercrombie et al and acts as a support layer. The relief cuts and gaps themselves, as seen in Kepes et al, is an aperture that is sized and configured to enable the support layer to be transformed from a planar configuration to a partial dome shaped configuration. Applicant has not claimed a centrally located aperture within the sheet. The support layer of Kepes et al as seen in figure 11 includes a plurality of panels 76 coupled to one another by the arcuate sheet support layer to configure the support layer in a dome shaped configuration that would substantially conform the shape of the element to a user's shoulder. The use of the pad on a shoulder region or a breast region is intended use and does not yield patentable weight. However the Sneider pad is usable on any surface it can fit upon such as a breast or a shoulder. Also it is noted that in claim 35, last line applicant claims a shoulder. However, the rest of the claim claims use on a breast or a shoulder.

Response to Arguments

Due to the newly found prior art of Kepes et al , Gerry and Abercrombie the new rejection under 35 USC 103(a) has been made. The substitution of the different adhering means on the Sneider three dimensionally shaped concave/convex breast pad is an obvious modification to one having ordinary skill in the art. The substitution of such known materials of adhesive means is well known and common knowledge. The use of relief cuts in any materials in order to make them three dimensionally shaped is also well known and common knowledge. All of this is seen in the references cited in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs.,...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/
Primary Examiner, Art Unit 3765
